

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ANNE BRYANT, ELLEN BERNFELD, and
4 GLORYVISION, LTD.,

5 Plaintiffs,

6 vs.

CASE NO.: 07-CV3050 (CLB)

7 EUROPADISK, LTD., MEDIA RIGHT
8 PRODUCTIONS, INC., VERY COOL MEDIA,
9 INC., DOUGLAS MAXWELL, THE ORCHARD
ENTERPRISES, INC., and RUSSELL J.
PALLADINO,

10 Defendants.

11 DEPOSITION OF ELLEN BERNFELD

12 Taken on Behalf of the Defendants

13
14 DATE TAKEN: Wednesday, February 13, 2008

15 TIME: 1:00 p.m. to 3:45 p.m.

16 PLACE: Sclafani Williams Court Reporters
17 1800 Second Street, Suite 875
Sarasota, Florida 34236

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22
23 Stenographically Reported By:
24 Leihla Collins
Registered Professional Reporter
25

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11 (Via telephone)

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1 P R O C E E D I N G S

2 ELLEN BERNFELD, called as a witness by the
3 DEFENDANTS, having been first duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. SHELOWITZ:

7 Q Good afternoon, Ms. Bernfeld. Can you hear
8 me okay?

9 A Yes, I can.

10 Q Okay. If you wouldn't mind just going a
11 little bit closer to the --

12 A Absolutely.

13 Q -- speakerphone.

14 A Sure.

15 Q It's difficult to hear.

16 My name is -- Hello?

17 A Yes.

18 Q Okay. My name is -- I'm hearing a click.

19 A Yeah, there's a click. There's a click I'm
20 hearing.

21 Q Yeah.

22 A But I can hear you fine.

23 Q Okay. My name is Mitch Shelowitz, I
24 represent the Defendants in the action captioned Anne
25 Bryant, Ellen Bernfeld and Gloryvision, LTD, versus

1 Europadisk and several others. The existing Defendants
2 are Media Right Productions, Douglas Maxwell and The
3 Orchard. And I'm going to be asking you a series of
4 questions pertaining to this matter over the course of
5 the next few hours. And what I would ask from you is
6 you answer the questions to the best of your knowledge
7 and belief audibly so that -- especially since I'm not
8 in front of you, a yes or a no, if that's what's
9 required, or a spoken answer rather than a nod or
10 anything else so that the court reporter can pick up
11 the answer to the questions.

12 The court reporter will be taking down
13 everything -- every question that I ask and every
14 answer. And your lawyer may have some objections and
15 those will be taken down as well. And if there's any
16 questions that you may not understand, please ask me to
17 restate them and I will.

18 Do you understand these instructions?

19 A Yes.

20 Q And is there any reason why you may not
21 understand the questions that I'm asking you today?

22 A Not that I'm aware of right now.

23 Q Is there any mental disability that you may
24 be under that may affect your ability to answer these
25 questions?

1 A No.

2 Q Is there any such physical disability?

3 A No.

4 Q Is there any medication or anything else that
5 may affect your ability to understand and answer these
6 questions honestly and to the best of your knowledge
7 and belief today?

8 A No.

9 Q Okay. Thank you. We're going to begin with
10 some preliminary questions.

11 Can you please state your full name for the
12 record?

13 A Ellen Marie Bernfeld.

14 Q And can you please provide your date of
15 birth?

16 A June 3rd, 1952.

17 Q And do you have a Social Security number,
18 Ms. Bernfeld?

19 MR. MONAGHAN: I don't think you need that
20 for the deposition. So we would object to
21 providing that. It would be part of the record
22 here and Social Security numbers are --

23 MR. SHELOWITZ: Excuse me?

24 MR. MONAGHAN: Social Security numbers are
25 confidential private -- privileged information and

1 I don't think there's a necessity for it.

2 MR. SHELOWITZ: We'll accept that for now.

3 If we need it, we'll come back to it.

4 BY MR. SHELOWITZ:

5 Q Ms. Bernfeld, can I please have your home
6 address?

7 A 990 Bogey Lane, Longboat Key, Florida.

8 Q What was the name of the street, please?

9 A Bogey, B-O-G-E-Y, Lane.

10 Q Okay.

11 A Longboat Key, Florida 34228.

12 Q And how long have you lived at that address?

13 A Two years.

14 Q And where did you live before that?

15 A In Rockland County.

16 Q And where in Rockland County?

17 A In Stony Point.

18 Q And do you recall your address there?

19 A 21 Collaberg Road.

20 Q How do you spell that?

21 A C-O-L-L-A-B-E-R-G, Road.

22 Q And for how long did you live at that
23 address, Ms. Bernfeld?

24 A Since 1994, I think.

25 Q And where did you live before that?

1 A I had an apartment in New York City, and also
2 lived in New Jersey.

3 Q Immediately prior to your residence in Stony
4 Point were you living in New York City?

5 A Yes.

6 Q And do you recall the address of your
7 residence in New York City?

8 A I lived at 2 Fifth Avenue.

9 Q And how long did you live at that address?

10 A I was there -- I was living in New Jersey,
11 and then I was living there maybe ten years, or five
12 years. Somewhere -- ten years.

13 Q So you lived for ten years in New York City?

14 A Yeah. I think -- I mean, I'm having a hard
15 time recalling the history of my moving from New Jersey
16 to New York City. You know, I did that -- I don't know
17 exactly when that took place.

18 Q And during the period that you were living in
19 New York did you maintain any type of other part-time
20 residence anywhere else in the world?

21 A No.

22 Q Did you have a vacation home anywhere else in
23 the world?

24 A When I was living in New York City?

25 Q When you were living in New York state.

1 A No.

2 Q When you were living in New Jersey, did you
3 have another home anywhere else in the world?

4 MR. MONAGHAN: Can I just ask for a proffer
5 as to the relevance of this line? We're talking
6 about events of many years ago.

7 MR. SHELOWITZ: I understand that.

8 MR. MONAGHAN: All right. So I think -- you
9 know, I'm aware of the liberality with which --

10 MR. SHELOWITZ: You can object, of course.

11 BY MR. SHELOWITZ:

12 Q Did you ever maintain any kind of holiday
13 residence anywhere else in the world when you lived in
14 either New York or New Jersey?

15 A No.

16 Q Did you ever visit Longboat Key, Florida
17 before you moved your residence --

18 A Yes.

19 Q -- to Florida?

20 A Yes.

21 Q And did you have any kind of vacation home
22 there?

23 A No.

24 Q Did you have family or friends that resided
25 in Longboat Key, Florida?

1 A Yes, my parents actually brought me down to
2 this area. And so I came down initially with my
3 parents to visit them and to help them -- my Dad got
4 ill down here. And I would travel back and forth with
5 them from New Jersey to Florida.

6 Q Okay. Do you currently have any occupation,
7 Ms. Bernfeld?

8 A Yes.

9 Q And what is your occupation?

10 A I'm a singer, I'm a songwriter and performer
11 and producer.

12 Q And with regard to your -- that line of
13 things that you do, do you work in an office?

14 A I now work in an office that would be my
15 home. That is where I create and practice and work
16 from.

17 Q And could you tell us -- you just testified
18 that you're a singer, songwriter, performer and
19 producer. Could you estimate what part each of those
20 elements you would invest in? Let's say for the last
21 year, how -- there are four different things, do you do
22 100 percent of those things all the time?

23 MR. MONAGHAN: Object to the form. Is the
24 question what percentage of time is spent doing
25 each one of those four areas of expertise? Is

1 that the question?

2 MR. SHELOWITZ: I couldn't really hear what
3 you said, but I'll rephrase it.

4 BY MR. SHELOWITZ:

5 Q How much time do you spend as a singer?

6 A I sing every day and work on my repertoire
7 and voice and prepare for future performances and
8 whatever else I'm going to be doing.

9 Q And what types of performances are you
10 involved in?

11 A At the moment right now or in the history of
12 my career?

13 Q Well, let's talk about the last 12 months.

14 A Right now I am performing at a cafe, and I'm
15 also teaching a class and performing within that
16 scenario.

17 Q And at the cafe how often do you perform?

18 A I just performed a week ago and I'm probably
19 going to be performing there in another two weeks to
20 three weeks.

21 Q And how long --

22 A Within the next month.

23 Q -- have you been performing at that cafe?

24 A This is a new job that I just began, so --
25 it's a new job.

1 Q And how many, if you could look back at the
2 last 12 months, how many public performances, public
3 singing performances, have you done?

4 A Unfortunately I was supposed to be working
5 all summer, but I had a vocal problem and I was unable
6 to do any performances over the summer, and I had to
7 actually go on vocal rest. So this particular -- I
8 would say like the last year, last -- it has been
9 difficult for me and I am now back in shape and
10 working.

11 Q And so if you could estimate in the last 12
12 months how many public singing performances you've
13 done?

14 MR. MONAGHAN: Can you give me a proffer as
15 to how this is even remotely relevant or likely to
16 lead to relevant evidence?

17 MR. SHELOWITZ: We're asking questions that
18 we believe will lead us to admissible evidence.

19 MR. MONAGHAN: Well, I'm asking --

20 MR. SHELOWITZ: We're entitled to ask this
21 background information.

22 MR. MONAGHAN: I'm asking you for a proffer
23 of how this could even lead to relevant evidence.

24 BY MR. SHELOWITZ:

25 Q If you could please answer the question.

1 MR. MONAGHAN: No, I --

2 MR. SHELOWITZ: Are you instructing her not
3 to answer? Because if you are --

4 MR. MONAGHAN: Not yet. I'm just -- I'm
5 asking --

6 MR. SHELOWITZ: This is part of our
7 background inquiry. This is a case about
8 copyright infringement, songs that were allegedly
9 performed and written by the Plaintiffs, and we're
10 entitled to ask questions that are related to
11 those issues. And that's exactly what we're
12 doing.

13 MR. MONAGHAN: I couldn't agree more. We
14 just have a slight difference of opinion of how
15 this would possibly relate.

16 MR. SHELOWITZ: Okay. If you could allow me
17 to ask the questions and allow your witness to
18 answer the questions, that would be terrific.

19 MR. MONAGHAN: Yeah.

20 MR. SHELOWITZ: I'm just going to ask the
21 court reporter to please read back my last
22 question.

23 MR. MONAGHAN: It sounds to me like you're
24 simply trying to stretch the record here, Mitch.
25 So I hope you get to the issues in this case very

1 quickly. I'll allow you some --

2 MR. SHELOWITZ: I just want to remind you of
3 a six-hour deposition that you took of Defendants
4 that was so far beyond what was near relevant.
5 This is right on point. You can either make your
6 objection, you can instruct your witness not to
7 answer if that's what you believe is appropriate;
8 otherwise, your witness is required to answer
9 under the Federal Rules. And I'd like for the
10 court reporter to repeat the question. And please
11 stop interrupting my questioning.

12 MR. MONAGHAN: I'll interrupt when I feel
13 it's appropriate to put an objection on the record
14 or ask for what I believe you are required to tell
15 us, which is a proffer of how this might remotely
16 relate to this case.

17 MR. SHELOWITZ: I'd just like to ask the
18 court reporter to please read back the question.

19 (The last question was read back by the court
20 reporter.)

21 MR. MONAGHAN: One second.

22 THE DEPONENT: Sure.

23 MR. MONAGHAN: Tell me how that relates to --

24 MR. SHELOWITZ: I am not -- I'm asking for
25 background information. And if you would let her

1 answer the question. There's nothing privileged
2 about it, there's nothing proprietary about it, it
3 is relevant to this case. And if you'd let her
4 answer the question, we'll move on to the next
5 one. I don't see making it such a big deal if she
6 can answer how many public performances she's had
7 in the last 12 months.

8 MR. MONAGHAN: When you're done, let me know
9 so I can put my statement on the record. Just let
10 me know.

11 Okay. These events that bring us to Court in
12 this deposition occurred in the years 1999, 2000
13 through 2005 and 2006. What Ms. Bernfeld is doing
14 right now as a cafe singer has nothing whatsoever
15 to do with those issues. And I feel that you are
16 simply trying to stretch the record here so that
17 you will try to make a case for further
18 deposition. Okay? So get on with your questions
19 that have something to do with the case.

20 BY MR. SHELOWITZ:

21 Q Okay. I'm going to just ask the question
22 again, and it's not a difficult one. Again, how many
23 public performances have you done in the last year?
24 You answered the question that I asked you about your
25 profession, you've explained that you're a singer,

1 songwriter, performer and producer, and I'm just
2 asking, again, as a matter of background, to understand
3 a little bit about your background and information
4 related to this case that you brought against our
5 clients what you've done in the last 12 months in terms
6 of performances. It's either -- was it more than five
7 performances?

8 A Yes, it was more than five performances. And
9 I was unable to sing for the last number of months. I
10 just got up and singing again because I was having a
11 vocal problem. So it was probably at least two a
12 month --

13 Q Okay.

14 A -- before that, if not more. And --

15 Q Okay. Now, again, going back to -- was it
16 more than ten performances that you had in the last 12
17 months?

18 A I don't really recall. As I explained to
19 you, I have not been able to sing for the last six
20 months or so. So I just started performing again.
21 Before that it was probably like two a month. I was
22 supposed to work all summer and I was unable to do
23 that, so --

24 Q In the last --

25 A But I'd like to add that this is irrelevant

1 to this case because --

2 (Overlapping speech.)

3 Q Your role, Ms. Bernfeld, the instructions are
4 you answer the questions --

5 A Sure.

6 Q -- that are asked to you. If your lawyer
7 wants to object, he can object.

8 A Sure.

9 Q Okay. And I'm asking you with regard to your
10 background. Now, you said that you're a songwriter.

11 Can you --

12 A Yes.

13 Q Can you please identify how many songs you've
14 written in your lifetime?

15 A Okay. Yes. When I was 16 years old, I was
16 recording professionally in the studios in New York
17 City --

18 Q Again, I'm just asking you --

19 A I'm telling you --

20 MR. MONAGHAN: The question is --

21 (Overlapping speech.)

22 MR. SHELOWITZ: Let me just ask the question,
23 because I'm -- the next thing is I'm just going to
24 go to the Judge and tell her that it's impossible
25 for me to conduct --

1 THE DEPONENT: Oh, okay. Okay. So the
2 question is how many songs have I written in my
3 lifetime?

4 BY MR. SHELOWITZ:

5 Q If you could just let me ask the questions,
6 please.

7 A Okay. Sure.

8 Q And answer my questions. Okay? I'm sure
9 you've done a lot of things in your lifetime. I'm
10 asking you specifically about songwriting.

11 A Okay.

12 Q And my question is very basic, how many songs
13 have you written in your life?

14 A Probably hundreds, something like that.
15 Maybe. I don't know. You know, 100, 200 songs. I
16 don't -- you know, I'm not exactly sure exactly how
17 many I've written.

18 Q And have you reduced those songs into some
19 form of writing?

20 A Yes, I have about 37 copyrights registered.

21 Q And those are for 37 songs?

22 A Yes.

23 Q And how many songs that you've copyrighted
24 have you done within the last ten years?

25 A The last ten years? That's 1998.

1 A bulk of them are probably in the last ten
2 years and some previous to that.

3 Q Okay. Can you tell me how many?

4 A Not exactly, no.

5 Q Do you recall how many copyrights you've
6 registered for songs that you've written in the last
7 five years?

8 A No.

9 Q And who, if anyone, prepared copyright
10 applications for you?

11 A I've prepared some and my partner, Anne
12 Bryant, has prepared copyright.

13 Q Has anyone else prepared your copyright
14 applications?

15 A I don't think so.

16 Q In terms of your work as a producer, could
17 you describe what you mean by the term producer?

18 A A producer oversees the making of a recorded
19 item. They can function as a -- as an arranger, they
20 direct the recording engineer, they can also function
21 as the person who handles the budget and hires all the
22 people involved and creates the overall sound and
23 direction a piece of music or a recording takes.

24 Q And when you say that you are a producer,
25 which of those things that you've just described are

1 you personally involved in?

2 A I have overseen in Songs for Dogs and Songs
3 for Cats. I was the producer, along with my partner,
4 Anne Bryant. I have produced my own records prior to
5 that.

6 Q Again, if I could just repeat the question
7 for you. You've listed four items when I asked you
8 what a producer is in your understanding. You said
9 someone who oversees making of the recorded item, an
10 arranger, creates overall sound and direction.

11 A Yes.

12 Q My question to you was which of those things
13 have you done in connection with --

14 A Actually I've participated in all four.

15 Q Okay. And is that something that you do
16 every day of your workday?

17 A At the moment or when I was in -- when I was
18 making these albums?

19 Q At the moment.

20 A At the moment. I'm not focused on producing
21 records at the moment.

22 Q When was the last time that you produced a
23 record?

24 A Last year. In December of last year.

25 Q And how many records did you produce last

1 year?

2 A I produced one record.

3 Q Was that a record that you were involved with
4 the songwriting or performances?

5 A I was involved with the arranging and
6 performances.

7 Q And in the last five years how many songs
8 have you produced, if any?

9 A I've produced one last year, I produced one
10 in -- I think it was 2002 or 2003, and I was involved
11 in the production and arrangement and performance. And
12 then in 2000 I produced another, involved in the
13 production, arranging and performance.

14 Q What was the year of that one?

15 A That was the year 2000.

16 Q And anything before that?

17 A Oh, yeah, quite a lot before that.

18 MR. MONAGHAN: Let him ask the question.

19 THE DEPONENT: Yes.

20 BY MR. SHELOWITZ:

21 Q And in 1999 did you produce any songs or --

22 A In 1999 I was -- no, I don't think I -- no.

23 Q What about in 1998?

24 A No, I don't think so.

25 Q And the song that you produced last year,

1 what was the name of that song?

2 A I did an arrangement of Amazing Grace.

3 Q And was that recorded?

4 A Yes.

5 Q And who is the performer, if anyone, on that
6 arrangement?

7 A I am the performer.

8 Q You sang?

9 A Excuse me?

10 Q You were singing the song, the --

11 A Yes, I did an arrangement of Amazing Grace
12 and I was the performer.

13 Q Okay. And what about in 2002, 2003, what was
14 that arrangement?

15 A I did an arrangement of a preexisting song
16 called Istanbul Not Constantinople, and I -- it's
17 entitled -- I wrote a back half to it. It was called
18 -- and it has then -- and talked with Warner Brothers,
19 and they allowed me to do this song and entitled the
20 disarmament song based on Istanbul Not Constantinople.

21 Q Okay. And so you took the preexisting song
22 and you produced it and you performed as well?

23 A Yes, I performed it as -- yes, as -- and I
24 also hired another musician to also perform on the
25 recording with me.

1 Q Okay. And the one in 2000, can you tell me
2 what --

3 A That was an original composition that I
4 wrote. And I hired a musician to perform and record
5 that record.

6 Q Okay. Did you sell any copies of the Amazing
7 Grace?

8 A No, they were not for sale.

9 Q Did anyone pay you in connection with that
10 production?

11 A No.

12 Q Did you receive any proceeds at all that
13 related to that production?

14 A No.

15 Q And with regard to the Istanbul Not
16 Constantinople based song, did you sell that?

17 A No, I did not sell that.

18 Q Did you receive any proceeds from any source
19 related to that song?

20 A No.

21 Q And the one in 2000, the original composition
22 that you were discussing?

23 A No, I did not -- I did not sell that either.

24 Q Was the intention of any of these to make any
25 sales or any -- derive any commercial revenue from it?

1 A No.

2 Q Okay. And you said there was nothing in 1999
3 and nothing in 1998 that you produced. Was there
4 anything in 1997?

5 A Not that I recall.

6 Q Okay. Okay. Were you involved in producing
7 the Songs for Dogs and the Songs for Cats?

8 A Yes.

9 Q And what year, if you recall, did you do
10 that?

11 A The Songs for Dogs was produced in 1994 and
12 Songs for Cats I think was produced in 1996.

13 Q And with regard to the Songs for Dogs, in
14 addition to your production did you perform on that?

15 A Yes.

16 Q And on how many of the songs did you perform?

17 A I sang solo on approximately half the songs
18 and I sang group parts on possibly all of them.

19 Q And with regard to Songs for Cats, in
20 addition to your production work on that did you
21 perform on any of the songs?

22 A Yes.

23 Q And how many of those songs did you perform
24 on?

25 A Approximately I probably sang solo, I think,

1 maybe on about half and sang group on probably all of
2 them. Wherever there was a group probably I was
3 singing on it.

4 Q And can you describe your other involvement
5 in connection with the production of the Songs for Dogs
6 recordings?

7 A I was involved in the overall sound of the --
8 each piece. I was involved in the vocal arrangements
9 and --

10 Q Tell me what you mean by overall sound.

11 A Overall stylistic direction involved in the
12 overall -- the vocal arrangements, the vocal
13 performances. I was involved in working with the
14 engineer, creating the mixes and the sound that each
15 record would have. I would -- I was involved in the
16 mastering of the product.

17 Q And was there -- do you recall -- strike
18 that.

19 Was there a time when you sought to sell the
20 Songs for Dogs compilation?

21 A Yes.

22 Q And when was the first time you sought to
23 sell that?

24 A To my recollection it was 1994 when the album
25 was released.

1 Q And in what media did you seek to sell Songs
2 for Dogs in 1994?

3 A We initially created Songs for Dogs as a gift
4 item and created a very unique packaging with gift
5 boxes and a book to go with it. It had ten different
6 characters and it was an illustrated book. So we
7 initially approached gift stores and catalogs and pet
8 gift stores.

9 MR. MONAGHAN: I think he asked what the
10 media was.

11 THE DEPONENT: What the media was?

12 BY MR. SHELOWITZ:

13 Q If you'd just let me --

14 A Sure. Then I misunderstood your question.
15 Sorry.

16 Q You told me CDs. Is there any other --

17 (Overlapping speech.)

18 A Yes, it was actually -- it began as
19 cassettes, as cassettes and a book. And then we --
20 then CDs and a book. And they were both in gift boxes.

21 Q And did you ever seek to sell Songs for Dogs
22 without this gift box that you're describing?

23 A At that point in time, no.

24 Q Ever did you?

25 A We started out with a gift box, then we

1 changed from the gift box to the more traditional CD
2 packaging in the smaller plastic case with a gift
3 booklet that went with it. We condensed our original
4 fully illustrated book down to a smaller booklet that
5 would go into the CD. We still had all of the
6 characters illustrated, all of their musical
7 influences.

8 Q Okay.

9 A And it still --

10 Q In connection with --

11 A I'm not finished, Mr. Shelowitz.

12 MR. MONAGHAN: She has not finished her
13 answer.

14 THE DEPONENT: And it still --

15 BY MR. SHELOWITZ:

16 Q My question again, Ms. Bernfeld, let me just
17 instruct you again.

18 MR. MONAGHAN: No, let me instruct you,
19 Mr. Shelowitz. Please don't interrupt my witness.

20 MR. SHELOWITZ: I'm not looking for a whole
21 elaborate answer, I'm looking for an answer to the
22 question. When you answer my question, you know,
23 we don't need to have a whole slew on the record.
24 All I'm asking you is for questions if you give me
25 the answer, that's great. Right now you've gone

1 on and on in areas which I haven't asked you. And
2 I appreciate it, but we're looking for specific
3 answers. And this way we'll be able to make this
4 as efficient as we can so we can get through it,
5 and -- so we can continue forward on this case.

6 MR. MONAGHAN: Please don't interrupt my
7 witness when she's in the middle of an answer.

8 BY MR. SHELOWITZ:

9 Q So with regard to the Songs for Dogs, in 1994
10 you started off selling it with the cassettes and the
11 book, and then you said that you switched to CD
12 packaging when you took the book -- and the CD; is that
13 correct?

14 MR. MONAGHAN: Repeat the question, please.

15 MR. SHELOWITZ: Can you read it back, please?

16 (The last question was read back by the court
17 reporter.)

18 MR. MONAGHAN: Object to the form of the
19 question. Could you rephrase it, please?

20 MR. SHELOWITZ: Is anyone speaking, because I
21 can't hear anything?

22 MR. MONAGHAN: Yes. I objected to the form
23 of the question.

24 MR. SHELOWITZ: Okay. You can answer the
25 question.

1 MR. MONAGHAN: No, she can't understand the
2 question. Please ask it again. Rephrase it.

3 MR. SHELOWITZ: How do you know that she
4 can't understand the question? I didn't hear --
5 (Overlapping speech.)

6 MR. SHELOWITZ: Again, I'm very close,
7 Mr. Monaghan, to go to the Court. Because I'm not
8 there I can't see what's going on. But what I do
9 hear is that you're objecting to the form and
10 you're telling -- you're saying that she doesn't
11 understand. I never heard her say she doesn't
12 understand.

13 THE DEPONENT: Could you repeat the question
14 for me?

15 MR. MONAGHAN: We asked you to repeat the
16 question.

17 MR. SHELOWITZ: And it was read back.

18 THE DEPONENT: I didn't understand the way --

19 MR. SHELOWITZ: Let me rephrase the question.

20 THE DEPONENT: Okay.

21 BY MR. SHELOWITZ:

22 Q In 1994 is it correct that you started
23 selling Songs for Dogs in the cassette form?

24 A Yes, the cassette in the gift box with the
25 book.

1 Q And in 1994 did you also sell Songs for Dogs
2 in the CD form?

3 A Yes. It was in a CD with a gift box and the
4 fully illustrated book with a story in it.

5 Q Okay. And with regard to Songs for Cats --

6 A Right. Oh, with regard to Songs for Cats?
7 When we --

8 Q Let me ask the question, please. There's no
9 question yet.

10 With regard to Songs for Cats, did there come
11 a time that you -- sell those recordings?

12 A Yes.

13 Q And when was that?

14 A That was after we finished producing the
15 album, which was, I think, in 1996.

16 Q Now, with regard to Songs for Dogs, you had
17 mentioned in your prior testimony that you initially
18 started in '94 selling with the CD and the book gift
19 set and cassettes and a book gift set and later on at
20 some point you started to take that book and you put it
21 inside a CD packaging; is that correct?

22 A We --

23 Q It's just a yes or no answer. It's either
24 it's correct the way I described it or it's not
25 correct.

1 A It's not correct the way you described it,
2 no.

3 Q Okay. So did there come a time when you
4 stopped selling the CDs and the book in separate units?

5 A I don't understand the question.

6 MR. MONAGHAN: Object to the form of the
7 question. No such testimony.

8 BY MR. SHELOWITZ:

9 Q Did there come a time when you no longer sold
10 a gift set for Songs for Dogs?

11 A There came a time when we made Songs for Cats
12 where we changed the gift packaging into the more
13 standard CD format. But we still had an illustrated
14 booklet with that CD with our initial story and all of
15 our initial characters.

16 Q And when did that change occur?

17 A That change occurred when we produced Songs
18 for Cats. And we never produced Songs for Cats with
19 the original gift box. We first produced it with the
20 more traditional CD packaging. And then we did the
21 same thing with Songs for Dogs.

22 Q And what year was it that you went to the
23 more standard format for Songs for Dogs?

24 MR. MONAGHAN: I object to the form of the
25 question.

1 Go ahead. You can answer, if you can.

2 THE DEPONENT: I think it was, you know, in
3 1996 when we first produced -- when we ended up
4 manufacturing Songs for Cats.

5 BY MR. SHELOWITZ:

6 Q Okay. So is it true that as of 1996 or
7 thereabouts you started to sell both Songs for Dogs and
8 Songs for Cats in a more standard CD format?

9 A Yes. We still had the gift boxes from Songs
10 for Dogs, though, as well.

11 Q And from that time that you started selling
12 Songs for Dogs in 1994, what has been your overall
13 sales revenue since that time for selling CDs and the
14 cassettes and the gift book?

15 A I think we sold approximately 10,000
16 products, somewhere about that.

17 Q That's for Songs for Dogs?

18 A That was for Songs for Dogs.

19 Q And that's from the beginning of the sales
20 until today?

21 A Possibly. I don't exactly know the figures.

22 Q So what do you base that assumption on, that
23 10,000 units?

24 A My partner, Anne Bryant, knows more exactly
25 about how many products we did sell. And we base that

1 on stores and sales receipts. And from her
2 knowledge -- I've heard from her that's approximately
3 what we sold. Maybe more, maybe less, but it was, you
4 know, initially that. And up to date I don't know that
5 -- how much we've sold.

6 Q To the best of your knowledge, do you know
7 how much revenue you received for sales from Songs for
8 Dogs?

9 A That would be more her department.

10 Q Do you have --

11 A It would be revenue in -- you know, to what
12 10,000 or more copies, you know, what they sold for. I
13 mean, I -- I'm not exactly sure, so --

14 Q Do you recall whether you sold any of the
15 Songs for Dogs CDs in the -- between, you know, 2006
16 and 2007?

17 A I don't recall. I know I just spoke with
18 somebody the other day who ordered it. And I -- you
19 know, so -- and I know Anne -- Anne handles more of
20 that end of the business.

21 Q Okay. And with regard to Songs for Cats from
22 1996 until today, do you know how many units you've
23 sold?

24 A I'm not aware of how many units we've sold on
25 that. I know it didn't do necessarily -- initially it

1 didn't sell as many as Songs for Dogs, but I'm not
2 clear on the figures.

3 Q And do you have any documentation that would
4 show the sales of any of your -- the Songs for Cats CDs
5 or cassettes?

6 A I'm not clear on that because Anne handled
7 more of that aspect of the business.

8 Q And when you say Anne handles more of that
9 aspect of the business, can you describe what her role
10 in the business is, please?

11 A Well, she's a creator of the product and an
12 arranger and composer, as well as she wrote the initial
13 story line that appears in the book. Because it --
14 Songs for Dogs was conceived as a gift product, but
15 it's also an entertainment property because we created
16 20 different characters that go along with the
17 products. And so Anne was instrumental on creating the
18 story line that goes along with both Songs for Dogs and
19 Songs for Cats. But she also was -- kept more of the
20 records as far as the sales records.

21 Q Is there anyone else that would have sales
22 records other than Anne?

23 A Not to my knowledge.

24 Q Whose -- let me strike that.

25 Have you ever been involved in any lawsuits

1 before?

2 A No.

3 Q In any capacity whatsoever?

4 A None.

5 Q And are you familiar with a company called
6 Gloryvision, LTD?

7 A Yes.

8 Q And to your knowledge do you know who owns
9 Gloryvision?

10 A That is my -- Anne Bryant and myself own
11 Gloryvision.

12 Q And can you describe your ownership in
13 Gloryvision?

14 A We're partners in the company. I'm
15 president.

16 Q You're president?

17 A Uh-huh.

18 Q And what is Anne's title?

19 A She is the chairman.

20 Q Do you have any employees?

21 A At the moment, no.

22 Q Have you ever had any employees?

23 A We have employees when we do a project that
24 we need employees for. When we had Songs for Dogs and
25 Songs for Cats we hired --

1 Q Excuse me?

2 A When we were doing Songs for Dogs and Songs
3 for Cats we hired an engineer, we hired a --

4 Q Working as employees full time for your
5 company?

6 A No, not employees full time.

7 Q And --

8 A It's a --

9 Q Those people that you just described as
10 employees, were they receiving a weekly or biweekly
11 salary from Gloryvision?

12 A It's not a -- it's a production company that
13 was producing these products. And they weren't
14 receiving a salary, they were working, you know, during
15 the week that the engineer -- weeks that the engineer
16 worked. It was an hourly rate just like when we hired
17 singers, et cetera. It was --

18 Q And did you take --

19 A It's an hourly rate.

20 THE COURT REPORTER: We missed the beginning
21 of that.

22 BY MR. SHELOWITZ:

23 Q Did you pay these people individually or did
24 you pay their production company for services?

25 A I am not exactly sure whether we paid

1 individually or their production company because Anne
2 handled more of that.

3 Q Other than in connection with the production
4 of Songs for Dogs and Songs for Cats in 1994 and 1996,
5 did you ever pay anyone as an employee at your company?

6 A We only paid people when we did -- we did --
7 when we were doing a project. We did a project earlier
8 and we paid -- we paid people; we paid engineers, we
9 paid studio time, we paid singers. So, you know, when
10 we were engaged in producing something, we paid people
11 for their time.

12 Q It sounds like you're using more outside
13 consultants than employees.

14 A No, these are -- these are not consultants,
15 these are professional musicians and professional
16 singers. The top professional talent in the New York
17 studio business. Professional engineers. The top
18 professional talent in the New York studio business.

19 Q Okay. And with regard to Gloryvision, has
20 Gloryvision ever had an office devoted to the company's
21 activities?

22 A Gloryvision has an office and had an office.

23 Q And where was that office located?

24 A It is located at the Garnerville Holding
25 Company in Garnerville, New York.

1 Q And did you sign a lease for the space in
2 Garnerville, New York?

3 A Yes.

4 Q And when did you vacate the space for
5 Gloryvision in Garnerville, New York?

6 A The space is not vacated.

7 Q So Gloryvision still maintains an office in
8 Garnerville, New York?

9 A Uh-huh.

10 Q I'm not sure that I heard that answer.

11 A Yes.

12 Q And can you describe the size of the space in
13 Garnerville, New York?

14 MR. MONAGHAN: Why is this relevant?

15 THE DEPONENT: It's quite a nice size space.

16 BY MR. SHELOWITZ:

17 Q And do you know how many square feet it is?

18 MR. MONAGHAN: What on earth does this have
19 to do with this case? You want to go to the
20 Judge? I want you to tell the Judge why the
21 number of square feet up at the company's facility
22 has something to do with the case.

23 BY MR. SHELOWITZ:

24 Q Do you know how many rooms are in the
25 Garnerville, New York space?

1 MR. MONAGHAN: Object to the form of the
2 question.

3 BY MR. SHELOWITZ:

4 Q You can answer the question.

5 A Two.

6 Q And was any of the work related to the
7 production of Songs for Dogs or Songs for Cats done in
8 that office?

9 A Yes.

10 Q And could you just tell us how far from New
11 York City Garnerville, New York is?

12 A It's maybe 45 minutes, 40 minutes. Somewhere
13 between -- depending upon the traffic.

14 Q Can we please have the address of that
15 location?

16 A I don't know the exact address of that
17 location. I don't know the -- it's the Garnerville
18 Holding Company. It was an old Civil War uniforms
19 factory. I don't know the actual address of the
20 company. It's just --

21 Q Is there a street that it's on?

22 A It's on Central Highway. I think that it's
23 on Central Highway.

24 Q Are there any other tenants in that building
25 to the best of your knowledge?

1 A Yes.

2 Q Would you know an approximate number of other
3 tenants in that building?

4 A Oh, there's a tremendous amount of tenants at
5 the Garnerville Holding Company. We're in building
6 number 24.

7 Q Okay. Now, earlier you testified that you
8 and Anne Bryant are partners in Gloryvision. Do you
9 own a specific ownership percentage of Gloryvision?

10 A To my knowledge we own Gloryvision equally.
11 So I would own 50 percent and she owns 50 percent.

12 Q Other than Gloryvision do you have any
13 ownership interest in other companies?

14 A I have my own personal production company.

15 Q And what's the name of that company?

16 A Mongo Musico.

17 Q Could you spell that, please?

18 A M-O-N-G-O, M-U-S-I-C-O.

19 Q And do you have any partners in that music
20 company?

21 A No.

22 Q Does Mongo Musico have an office anywhere?

23 A It has an office in my home.

24 Q On Longboat Key?

25 A Uh-huh.